

2023-1877

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MARMEN INC., MARMEN ENERGIE INC., MARMEN ENERGY CO.,

Plaintiffs-Appellants,

v.

UNITED STATES, WIND TOWER TRADE COALITION,

Defendants-Appellees

Appeal from the United States Court of International Trade in
Case No. 1: 20-CV-00169, Judge Jennifer Choe-Groves

**DEFENDANT-APPELLEE’S CONSENT MOTION FOR AN EXTENSION
OF TIME FOR PARTIES TO FILE THEIR RESPONSE BRIEFS**

Pursuant to Federal Circuit Rule 26(b), defendant-appellee, the United States, respectfully requests that the Court grant an extension of time of 14 days, through November 1, 2023, for the defendant-appellees (the Government and Wind Tower Trade Coalition (WTTC)) to file their response briefs in this appeal. The defendant-appellees’ response briefs are currently due on October 18, 2023. This is our second request for an extension of time for this purpose, the Court having previously granted an extension of 58 days. We have conferred regarding this motion with counsel for the other parties and obtained appellants’ and

WTTC’s consent by email on October 4, 2023. Maureen Thorson consented on behalf of WTTC, and Jay Campbell consented on behalf of appellants while stating that “Plaintiffs-Appellants believe that an additional extension is unwarranted given that Defendants-Appellees already have received a 58-day extension, but consent as a professional courtesy.”

Good cause exists to grant the extension that we are requesting because we require additional time to coordinate the contents of the Government’s response brief with the Department of Commerce, and because lead counsel of record for the Government is required to balance work on this appeal with numerous other matters with conflicting responsibilities (including matters arising subsequent to our previous extension request). As an initial matter, our extension of time request is rooted in the fact that the briefing in this appeal is lengthy and technical in nature, and now includes an amicus brief making further arguments based on additional statistical materials.

At the same time, counsel’s ability to complete the response brief by the current deadline has been particularly affected by the need to file an unexpectedly long response brief—which the Court of International Trade granted leave to be up to 29,500 words (approximately 92 pages)—in *Jinko Solar Import and Export Co. Ltd. v United States*, Consol. Ct. Int’l Trade No. 22-00219 (filed Sept. 18, 2023). The unexpected length of that filing required counsel to draft the equivalent of two

full-length briefs, instead of one, and affected the filing's timing. Moreover, unexpected issues arose in the days immediately preceding the *Jinko* filing, including the Court of International Trade's issuance of a decision on an issue of first impression concerning Commerce's treatment of Section 301 duties in the agency's antidumping duty calculations that was also raised in *Jinko*. Further, subsequent to our previous extension request in this matter, the Court of International Trade set argument for September 21, 2023, in *Risen Energy Co., Ltd. v. United States*, Consol. Ct. Int'l Trade No. 22-00231, and we were also required to file remand comments briefing in *Risen Energy Co., Ltd. v. United States*, Consol. Consol. Ct. Int'l Trade No. 20-03912 on September 29, 2023.

Counsel's work on these matters, in addition to other matters for which counsel has extended the briefing deadlines to later in the Fall, has required a substantial portion of counsel's time in recent weeks and leads to our need for an extension of time.

Further, so that deadlines in this appeal remain consistent, we respectfully request that the extension apply both to the Government and to WTTC.

Accordingly, we respectfully request that the Court extend to November 1, 2023, the time for the Government and WTTC to file their response briefs in this appeal.

Respectfully submitted,

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Principal Deputy Assistant
Attorney General

PATRICIA M. McCARTHY
Director

/s/ Reginald T. Blades, Jr.
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October 5, 2023

Attorneys for Defendant-Appellees

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DECLARATION OF JOSHUA E. KURLAND

I, Joshua E. Kurland, state the following:

1. I am an attorney with the Department of Justice, Civil Division, Commercial Litigation Branch, Washington, D.C. In that capacity, I am counsel of record in *Marmen Inc., et al. v. United States*, Fed. Cir. No. 2023-1877. I submit this declaration, pursuant to Fed. Cir. Rule 27(b)(5), in support of our motion for an extension of time of 14 days.

2. Good cause exists to grant the extension that we are requesting because we require additional time to coordinate the contents of the Government's

response brief with the Department of Commerce, and because I am required to balance work on this appeal with numerous other matters with conflicting responsibilities (including matters arising subsequent to our previous extension request).

3. As an initial matter, our extension of time request is rooted in the fact that the briefing in this appeal is lengthy and technical in nature, and now includes an amicus brief making further arguments based on additional statistical materials.

4. At the same time, my ability to complete the response brief by the current deadline has been particularly affected by the need to file an unexpectedly long response brief—which the Court of International Trade granted leave to be up to 29,500 words (approximately 92 pages)—in *Jinko Solar Import and Export Co. Ltd. v United States*, Consol. Ct. Int’l Trade No. 22-00219 (filed Sept. 18, 2023). The unexpected length of that filing required me to draft the equivalent of two full-length briefs, instead of one, and affected the filing’s timing. Moreover, unexpected issues arose in the days immediately preceding the *Jinko* filing, including the Court of International Trade’s issuance of a decision on an issue of first impression concerning Commerce’s treatment of Section 301 duties in the agency’s antidumping duty calculations that was also raised in *Jinko*.

5. Further, subsequent to our previous extension request in this matter, the Court of International Trade set argument for September 21, 2023, in *Risen*

Energy Co., Ltd. v. United States, Consol. Ct. Int'l Trade No. 22-00231, and we were also required to file remand comments briefing in *Risen Energy Co., Ltd. v. United States*, Consol. Ct. Int'l Trade No. 20-03912 on September 29, 2023.

6. My work on these matters, in addition to other matters for which I have extended the briefing deadlines to later in the Fall, has required a substantial portion of my time in recent weeks and leads to our need for an extension of time.

7. Further, so that deadlines in this appeal remain consistent, we have also respectfully requested that the extension apply both to the Government and to WTTC.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 5, 2023.

/s/ Joshua E. Kurland

Joshua E. Kurland

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure, respondent's counsel certifies that this motion complies with the Court's type-volume limitation rules. According to the word count calculated by the word processing system with which this motion was prepared, the motion contains a total of 544 words.

/s/ Joshua E. Kurland